

The requirement for these types of peas to have an obvious green color has caused undue economic stress on the industry. Frozen field pea and black-eye pea processors must purchase imported, hand-harvested peas and blend them with domestic crops to meet the "Grade A" color requirement. AFFI estimates that 10 million pounds of imported peas must be purchased by U.S. processors per year at an approximate annual cost of more than \$2 million.

Based on all the information received, USDA is amending Section 52.1669 in the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas by removing the color attributes requirements for frozen black-eye peas and frozen cream peas from the text and Table III of this section.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

This change is expected to facilitate marketing of frozen field peas and frozen black-eye peas.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the Federal Register because, the harvesting season for field peas and black-eye peas has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, also reduces costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received within the comment period prior to finalizing this rule.

#### List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to amend 7 CFR part 52 to read as follows:

## PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS<sup>1</sup>

### Subpart—United States Standards for Grades of Frozen Black-eye Peas and Frozen Field Peas

1. The authority citation for Part 52 is revised to read as follows:  
Authority: 7 U.S.C. 1622–1624.

2. In § 52.1669, paragraphs (a), (b), and Table III in paragraph (c) are revised to read as follows:

#### § 52.1669 Classification of color and grade compliance.

(a) *General.* The requirement for "color attributes" is applicable for Grade A classification only. "Color attributes" do not apply to units of black-eye peas, cream peas, or units of "snaps" in the style of "frozen peas with snaps."

(b) *Color attributes.* "Color attributes" are defined as follows:

(1) "Crowder peas." Each unit with a color that is characteristic of very young peas.

(2) "Field peas" and "mixed types." Each unit with a color that is characteristic of very young peas.

(c) \* \* \*

TABLE III.—COLOR ATTRIBUTES

Absolute limit (AL)	Minimum number permitted	
	73	119
	Field peas, and mixed types	Crowder peas
Number of sample units		
1 .....	84	133
2 .....	175	276
3 .....	268	421
4 .....	362	566
5 .....	456	712
6 .....	551	859
7 .....	646	1006
8 .....	741	1153
9 .....	837	1148
10 .....	932	1596
11 .....	1028	1596
12 .....	1124	1744
13 .....	1220	1892
14 .....	1315	2040
15 .....	1411	2188
16 .....	1508	2336
17 .....	1604	2485
18 .....	1700	2633
19 .....	1796	2782
20 .....	1892	2930

<sup>1</sup> May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

TABLE III.—COLOR ATTRIBUTES—Continued

Absolute limit (AL)	Minimum number permitted	
	73	119
	Field peas, and mixed types	Crowder peas
21 .....	1989	3079
Acceptable quality Level (AQL) <sup>1</sup> .....	14.0	21.50

<sup>1</sup> Based on an average count of 1400 units for "White Acre" peas and 700 units for all other types per 10 ounce package.

Dated: December 1, 1995.

Lon Hatamiya,

Administrator.

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## Federal Crop Insurance Corporation

### 7 CFR Parts 401, 443, and 457

RIN 0563–AB43

### General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation ("FCIC") hereby amends the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Small Grains, Cotton, Extra Long Staple Cotton, Sunflower Seed and Coarse Grains Crop Insurance Provisions, applicable beginning with the 1996 crop year for spring planted crops with contract change dates on or after the effective date of this rule, by revising prevented planting coverage. The intended effect of this regulation is to expand prevented planting benefits available under the various policies being amended.

**DATES:** The effective date of this rule is November 30, 1995. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996.

**ADDRESSES:** For information collection comments submission, see

**SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** For further information and a copy of the

Cost-Benefit Analysis and Regulatory Flexibility Analysis to the General Crop Insurance Regulations; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations for implementation of the prevented planting provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254-8314.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for Small Grains is July 1, 1998; Coarse Grains, Cotton, Extra Long Staple Cotton and Sunflower Seed is March 1, 1999; Hybrid Seed is October 1, 1997; Hybrid Sorghum Seed is May 1, 2000; and Rice is August 29, 1998.

This rule has been determined to be "economically significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Cost-Benefit Analysis is completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected Treasury costs of these changes are expected to range between \$2.1 and \$20.8 million. Added costs are due to higher reimbursements to reinsured companies and for premium subsidies for producers. The estimates assume the majority of producers will decline the coverage for the substitute crop, opting instead for a reduced premium on the intended crop. Nationwide, premium rates will increase 6 to 7 percent for the added coverage. As examples of monetary impacts, this means an average increase in the producer paid premium of 20-25 cents per acre for wheat in the Northern Plains; 30 cents for corn in Iowa; and 60-90 cents per acre for upland cotton. However, the premium rate increases will not be uniform. Instead, the highest risk areas (such as lowlands along rivers and similar conditions) can expect greater increases in premium to cover the added risk. Producers who farm such lands are expected to be the primary group that will retain this added coverage and elect to pay the additional premium. The changes to the prevented planting rules will provide producers

with added assistance in extreme weather conditions in a manner that maintains the actuarial integrity of the Federal crop insurance program.

#### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through February 28, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). Public comments are due by January 8, 1996.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Hybrid Seed Crop Insurance Regulations and Common Crop Insurance Regulations." The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting insurance options that apply to specific crops or specific areas in which a crop is produced. Potential respondents to this information collection are growers of crops that are eligible for Federal Crop Insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,750,015 respondents. The total annual burden on the public for this information collection is 2,668,750 hours. The total annual burden has increased from the 1995 requirements to reflect the paperwork burden on the reinsured companies.

Comments were invited on the information collection requirements during the proposed rule stage. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996, on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Information Management Branch, Consolidated Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690-2857.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

The amount of work required of the insurance companies and FSA offices delivering the policies and the procedures therein may increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. Therefore, this action has been reviewed under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and a Regulatory Flexibility Analysis is available to interested persons at the address listed above.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal requirements of the National Appeals Division under

Public Law 103-354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule a producer who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates on or after the effective date of this rule, will be eligible to: (1) Receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop after the 10th day after the final planting date for the intended crop (10th day after the latest final planting date for each specific crop insured under the Small Grains Crop Provisions) and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer.

By this rule, the prevented planting provisions will also: (1) Allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required from 3 days after the final planting date, or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4)

allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without affecting prevented planting benefits.

On Wednesday, November 8, 1995, FCIC published a proposed rule in the Federal Register at 60 FR 56257 to revise prevented planting coverage under various policies. Following publication of that proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. A total of 14 comments were received: 3 from Regional Service Offices; 5 from reinsured companies; 4 from crop insurance trade associations; 1 from a grower association; and 1 from a congressional office. The comments received and FCIC responses are as follows:

*Comment:* One comment received from the crop insurance industry indicated that the proposed changes for 1996 are less than timely, as 1996 training and marketing activities have already begun for the crops affected by the proposed rule. The comment recommends that FCIC move to process the final rule as soon as practical to minimize confusion in the 1996 crop year.

*Response:* FCIC agrees that the 1996 prevented planting regulations need to be published and implemented as quickly as possible.

*Comment:* Two comments received from the crop insurance industry recommended that whatever the final prevented planting provisions are, they should stand for the crop year without further change.

*Response:* FCIC agrees with the comment and is committed to limit changes unless deemed essential.

*Comment:* One comment received from the FSA stated that canola crop provisions need to be included and amended to conform to the 1996 prevented planting changes since the canola policy has prevented planting provisions.

*Response:* FCIC disagrees because canola is a pilot policy that has not been published in the Federal Register. No change will be made.

*Comment:* One comment received from the crop insurance industry noted that the term "Consolidated Farm Service Agency" is used in the provisions and that the term used should now be "Farm Service Agency."

*Response:* FCIC agrees and has made the necessary changes.

*Comment:* One comment received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act.

*Response:* The Office of General Counsel approved FCIC's proposed regulation for legal sufficiency. The short comment period was necessary due to pressure to provide an adequate program to producers by the applicable contract change dates. FCIC believes that adequate time was given for the public to comment, based on the number and length of comments received.

*Comment:* One comment received from the crop insurance industry indicated that administrative costs and errors and omission exposure will increase at the point of sale to the extent the provisions must be explained adequately.

*Response:* FCIC agrees that the provisions must be clearly communicated to avoid the exposures indicated in the comment. FCIC is making every effort to provide the new provisions as early as possible to allow adequate time for training, etc.

*Comment:* Four comments received from the crop insurance industry indicated the need to allow modification of the already approved 1996 Standard Reinsurance Agreement to recognize the increased administrative and underwriting costs associated with the increased benefits and potential adverse selection associated with this rule. This modification, in the form of an optional amendment, would allow the reinsured company the option of assigning policies with prevented planting losses to FCIC or to pre-designate that such policies will fall to a different fund and/or have a different retention percentage than that designated in the reinsured company's plan of operation. In addition, one of the comments proposes that provisions regarding excess loss adjustment expense that are being considered for the 1995 crop year be adopted for the 1996 Standard Reinsurance Agreement. One comment indicates that the proposal may be characterized as implementing into the subject policies the prevented planting benefits that were administratively adopted during the 1995 crop year, and that the changes made in 1995 appear to have significantly increased administrative and underwriting costs. One comment stated that reinsured companies must be provided with a means under the Standard Reinsurance Agreement to either cede the entire premium and losses associated with prevented planting to FCIC or to cede the premium and losses to a risk fund other than that in which the rest of a policy is placed. Until the adequacy of the rating can be tested, FCIC must bear all or substantially all of the risk of loss

(and any gain) associated with these policies if a company is unwilling or unable to. One comment stated that FCIC has failed to minimize moral hazard and has proposed a program that it expects will be adversely selected against and will therefore damage the integrity and actuarial soundness of the crop insurance program. Without providing private insured companies with a means to cede the increased risk associated with the proposed provisions entirely or almost entirely to FCIC, the proposed rule would force private companies to bear losses due to programmatic decisions which they had no control over.

*Response:* FCIC has promulgated premium rates that reflect the 1996 prevented planting provisions; thus, FCIC is not compelled to provided additional options to select among reinsurance funds or assume all the risk associated with the program change. Promulgation of premium rates prior to publication of this final rule was permissible because the actuarial material also contained the premium rate that would be used if this rule were not made final. The additional excess loss adjustment expenses provided for the 1995 crop year were made to offset the expense of loss adjustments when the Company had to re-open completed claims, and to clear a considerable number of notices of loss to determine if payable prevented planting claims existed. It was also expected that additional expense was incurred to re-train agents and loss adjusters on the prevented planting changes and loss procedures. FCIC believes that administrative expense reimbursement and excess loss adjustment expense provided under the Standard Reinsurance Agreement effective for the 1996 reinsurance year are adequate to cover such expenses for the 1996 crop year.

*Comment:* One comment received from the insurance industry indicated concern over whether enough premium differential is included in the prevented planting rates to adequately cover prevented planting payments on so called 0/92 acres. The comment indicated that providing both guaranteed deficiency payments and prevented planting payments invites policyholders to make an economic decision not to plant, and that these decisions will adversely impact the insurer. The comment indicated reservation over whether enough rate could be charged to counter this adverse selection opportunity.

*Response:* Guaranteed deficiency payments such as under the so called 0/92 and 50/92 programs are independent

of crop insurance payments. Therefore, the risk of insurance against prevented planting should be unaffected. However, farm management decisions can be and should be made based on economics. The 0/92 and 50/92 benefits already have a significant influence on producer reaction. There now is a moral hazard that a producer may be influenced to collect a prevented planting payment in addition to the 0/92 or 50/92 payment; however, the extent of the moral hazard is unknown. That moral hazard is greatly influenced by the assessment of the 0/92 and 50/92 program in any given year. For example, if the guaranteed deficiency payments are decreased or expected to decrease, then the 0/92 and 50/92 program payments are also minimized and the moral hazard for additional prevented planting payments are likely to disappear. The reverse is also true if the guaranteed deficiency payments are expected to increase. Therefore, the moral hazard can only be approximated by adding an additional rate to counter the expected adverse selection potential of the dual payments. County rates were increased based on the probability that some additional losses will accrue given the influence of the so called 0/92 or 50/92 program.

*Comment:* One comment received from the legal counsel of a reinsured company indicated an inconsistency with the coverage provided and the Federal Crop Insurance Reform Act of 1994 (the "Reform Act"). The Reform Act indicates that for CAT coverage a prevented planting benefit will be paid only if a producer is unable to plant another crop. Current crop provisions and the proposed provisions provide a prevented planting benefit if a producer is prevented from planting the insured crop and elects not to plant a substitute crop.

*Response:* FCIC agrees that this issue must be analyzed and modifications made if found necessary. However, the comment is not germane to this rule because it applies to regulations already in place.

*Comment:* One comment received from the legal counsel of a reinsured company states that the proposed provisions are in conflict with section 506(o) of the Federal Crop Insurance Act (the "Act") which directs FCIC "to take such actions as are necessary to improve the actuarial soundness of the Federal multiperil crop insurance coverage." Reasons cited include: (1) Increased moral hazard, particularly if market prices (and/or yields) are expected to be low and net returns for a substitute crop or 0-50/92 benefits are expected to be high; (2) elimination of provisions that

required prevented planting acreage to be prorated to all units that could have been planted to the insured crop; and (3) the addition of provisions that provide prevented planting benefits for producers who follow a double-cropping practice without sufficient premium to offset the risk.

*Response:* In addition to maintaining an actuarially sound insurance program, FCIC is mandated to maintain fair and effective coverage for agricultural producers. FCIC must also make the administration of its programs efficient and practical. Virtually all insurance providers have indicated that previous provisions requiring proration of eligible acreage were complex, unmanageable, and not fair to producers in many cases. Producers have been eligible to collect deficiency payments on planted acres and certain prevented planting acreage. There is no justification for denying those benefits when producers are eligible for crop insurance benefits provided premium rates reflect the increased risk of loss. FCIC has developed premium rates for prevented planting based on sound rating principles, including those prevented planting situations that may develop in double-cropping areas. If data is available indicating that rates are insufficient to offset the risk, FCIC requests submission of such data so that it can be reviewed and any necessary changes can be made.

*Comment:* One comment received from a commodity group and one comment received from the crop insurance industry stated that they have concerns about projected premium increases. They request that producers have the option of excluding prevented planting coverage in its entirety. Producers need to be able to assess the rate increase before purchasing crop insurance coverage to see if prevented planting coverage is economically feasible for them. They stated that the projected average cost increase is 6-8 percent and in some high rate areas may be as much as 20 percent. Producers cannot afford another premium increase.

*Response:* Prevented planting coverage was made an integral part of the policy following the 1993 crop year to lessen the need for ad hoc disaster assistance for growers who were prevented from planting. If allowed to opt out of the coverage, FCIC believes that large numbers of growers would exclude the coverage. This assessment is based on the experience of 1993. This would result in a great deal of pressure either to institute insurance coverage after a loss has occurred or a great deal

of pressure for some other form of financial assistance.

*Comment:* One comment received from members of the House of Representatives of the United States Congress stated that most of West Texas has been given a large multiperil rate increase on cotton that producers simply cannot afford. They have been informed that some counties have suffered as much as a 20 percent rate increase for 1996. They stated that the provisions suggest that the primary benefits account for a 6–7 percent rate increase even if the secondary coverage is rejected. The impact analysis estimates the majority of producers will decline the coverage for the alternate crop, opting instead for a reduced premium on the intended crop. They stated that the prevented planting benefits appear to account for at least 13 percent of the 20 percent rate increase. They feel the prevented planting provisions should be modified to allow producers to reject all prevented planting coverage in return for an additional reduction in premium in the amount of the 6–7 percent FCIC claims the primary coverage for prevented planting is worth. They stated that producers cannot afford a premium increase to pay for prevented planting coverage they do not need. In 1995, West Texas experienced a rate increase that was largely absorbed by a 30–42.5 percent increase in subsidy payments. The 1996 rate increase will be borne by producers alone. This increase is an unnecessary burden on the agricultural community.

*Response:* The rate increase not associated with the 1996 prevented planting program change is necessary to make the cotton crop insurance program actuarially sound. Primary prevented planting benefits account for only 0.2 percent to 0.4 percentage points of premium rate. Therefore, growers opting out of the primary prevented planting coverage would receive a very small credit. FCIC believes that basic prevented planting coverage should remain an integral part of the policy to ensure growers are covered in the event that prevented planting occurs (also see response to comment above).

*Comment:* Seven comments received from the crop insurance industry and one comment received from FSA recommended amending the definition of prevented planting because: (1) The definition includes reference to “most producers in the surrounding area” and the term “most” is not defined. As a result there is no way to apply the definition to any particular policyholder when there is a dispute over whether or not planting was actually prevented; (2)

The day after the final planting date, a producer could plant a substitute crop and receive a prevented planting benefit; and (3) The provisions must require prevented planting conditions to have to exist through the whole late planting period before any prevented planting payment is due because: (a) Prevented planting should never have been allowed for producers who quit planting by the final planting date and made no effort to plant within the late planting period; (b) allowing the producer to declare prevented planting on the day after the final planting date defeats the purpose of the late planting provision and submits the program to unwarranted risk; (c) the producer may not plant an alternative crop or enter into 0/92 until after the late planting period has expired for the original crop and still collect a prevented planting payment (with the obvious requirement that weather conditions continue to prevent planting in the late planting period); (d) the prevented planting payment payable when an alternative crop is planted must be reduced from that level available if no alternative crop is planted; (e) in no circumstance could the producer switch to an alternative crop prior to the end of the late planting period and still collect a prevented planting payment (they would be free to plant whatever crop they wanted at any time, they just should not expect to collect a prevented planting payment on the original crop if they do not go through the late planting period of the original crop); and (f) moral hazards and abuse are created when producers are allowed to collect a substitute crop immediately after the final planting date. In most cases producers will plant the crop into the late planting period as a normal practice, but now we have created a disincentive to do so.

*Response:* FCIC agrees that a more definitive term than “most” should be used and has replaced it with the term “majority” to reflect that more than 50 percent of the producers must have been prevented from planting.

This definition was designed to accommodate extremely varied production areas and farming practices; including those in which growers do not plant after the final planting date and those in which growers often do plant a crop within the late planting period. Some farming areas have relatively short growing seasons which make the prospect of a successful crop doubtful if planted much beyond the final planting date. Other areas have much longer growing seasons and often allow a successful crop to be grown even if planted after the final planting date. In both long and short growing areas, some

farming practices, such as the production of silage, allow a grower to plant after the final planting date and still produce an acceptable crop. Changing the definition to require that prevented planting conditions must have existed through the end of the late planting period before any prevented planting coverage would be provided would not accommodate growers who normally do not plant after the final planting date.

FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC has amended these regulations to specify that prevented planting coverage will not be provided when a producer, prevented from planting the initially intended crop, plants a substitute crop within ten days after the final planting date for the initially intended crop.

*Comment:* One comment received from the crop insurance industry suggested that FCIC’s actuaries re-evaluate: (1) When the late planting period should start (i.e., final planting date); (2) whether the late planting period should be shortened; and (3) whether or not eligibility for a prevented planting payment should trigger at the time that shortened period is exhausted.

*Response:* These evaluations are ongoing. FCIC requests that any person who has data affecting these matters make it available for consideration.

*Comment:* One comment received from a commodity group stated that they oppose the lower percentage level of insurance guarantee proposed for prevented planted cotton compared to other commodities. They contend the criteria that should be used to determine coverage for prevented planting should be applied consistently among commodities.

*Response:* Data used by FCIC to determine prevented planting benefits indicated cotton producers incur a larger percentage of total production costs after planting than do producers of corn and other grain crops. Additional post-plant costs incurred by cotton producers include those for pest control and the costs associated with the ginning and handling of cotton. Therefore, no change will be made. FCIC is willing to work with producer groups and other interested parties to review existing data to revise levels of benefits when analyses indicate it is necessary.

*Comment:* One comment received from the crop insurance industry recommended increasing the standard

prevented planting payment from the current 50 percent to 60 percent.

*Response:* The prevented planting payment of 50 percent adequately compensates the producer for the loss of production, taking into consideration cost, not incurred. FCIC has discovered that increasing the standard prevented planting payment reduces the incentive for producers to plant the intended crop by the end of the late planting period when it is possible and increases the cost to the program. Therefore, FCIC will not change the standard prevented planting payment.

*Comment:* One comment received from counsel for a reinsured company on behalf of the crop insurance industry stated that the Reform Act contains a provision that allows a reduction in the benefit amount paid to a producer to reflect out-of-pocket expenses not incurred by a producer as a result of not planting, growing, or harvesting the crop for which a prevented claim is made. The comment indicates that this proposed rule is silent regarding this requirement for limited and additional coverage, but that FCIC is required by the Reform Act to include this provision for CAT coverage.

*Response:* Prior to enactment of the Reform Act, prevented planting production guarantees for all coverages and crops were at least 50 percent lower than the guarantee for a timely planted crop to avoid compensating producers in excess of their actual losses and provide actuarially sound coverage. This has not changed.

*Comment:* One comment received from the crop insurance industry stated that the inclusion of drought as an insurable peril and lack of any firm definitions or procedural guidelines subjects the Company and FCIC to abuse and fraud.

*Response:* FCIC does not believe that inclusion of drought as an insurable peril substantially subjects the company and FCIC to abuse and fraud. The burden is on the producer to prove that drought prevented a producer from planting. Further, the Soil Conservation and Extension Services have advised producers on occasion not to plant because it was so dry that planting the ground could result in severe wind erosion. The rule also requires a majority of producers to be affected by the cause of loss.

*Comment:* One comment received from the crop insurance industry recommended that in an effort to increase the incentive to plant the original crop as opposed to simply collecting insurance and farm program benefits, it might be advisable to consider reducing the late planting

period from 25 to 20 days, with the reductions in guarantees over the 20 days totalling 25 percent, to leave the person with a guarantee equal to 75 percent of their original level—(i.e. 1 percent per day for the first 10 days and 1.5 percent per day for the second 10 days).

*Response:* Under the current formula, the production guarantee is reduced only 1 percent for each of the first ten days and 2 percent for days 11–25. FCIC believes this formula provides adequate incentive for producers to plant crops early in the late planting period to keep their insurance production guarantee at the highest level possible. Changing the length of the late planting period and the percents of reduction could result in over insurance and increased crop insurance indemnities. Therefore, no change will be made.

*Comment:* One comment received from FSA recommended that acreage that is planted to the insured crop after the late planting period be designated as late planted with a 50 percent reduction in guarantee. They stated that it is very confusing to have this acreage designated as prevented planting.

*Response:* If acreage is prevented from being planted through the late planting period due to an insurable cause of loss, and is planted to the insured crop after the late planting period, the acreage will receive a 50 percent reduction in guarantee and must be reported as prevented planting acreage. This information is needed by FCIC for analytical purposes in reviewing crop insurance premium rates. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended that the cover crop planted on prevented planting acres could only be hayed or grazed by the producer's own livestock. The producer could not sell hay or charge others to let livestock graze.

*Response:* FCIC disagrees because it increases costs, is administratively difficult to enforce, and is contrary to legislative directives to simplify procedures. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry indicated that the "background" section of the proposal indicates that prevented planting acreage may be planted to a conserving use cover crop that may be hayed and grazed without limitation, but that the actual policy language indicates only that a cover crop not for harvest may be planted. The comment suggests modifying the policy language to indicate that haying and grazing is permissible if this is the intent.

*Response:* Paragraph 12(a)(3)(i) of the Hybrid Sorghum Seed Endorsement states that prevented planting coverage is available "if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed \* \* \*". This provision is also contained in a similar location in the proposed regulations for other crop policies. Therefore, no change is required. However, the "background" section will be amended to reflect that a conserving use cover crop may be hayed or grazed without affecting prevented planting benefits.

*Comment:* One comment received from FSA stated that under the provision allowing for a production guarantee of 50 percent (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton and rice) of the timely planted guarantee, prevented planting compensation should not be allowed when the cover crop is hayed or grazed because the producer is receiving a benefit from that crop.

*Response:* FCIC agrees that some value is gained when a cover crop is hayed or grazed. However, this benefit is of limited value in comparison with the income that would be gained if the intended crop could have been planted. In addition, the feed value obtained varies widely and may be negligible in some situations. It is FCIC's opinion that the administrative costs associated with keeping track of the disposition of feed production outweigh any benefit that could be derived.

*Comment:* Eleven comments received from FSA and the crop insurance industry recommended eliminating the provision which provides a prevented planting guarantee equal to 25 percent of the production guarantee for timely planted acres (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop for harvest. The following reasons were given: (1) This protection was not intended or mandated by the Reform Act; (2) the previous disaster programs never provided this type of protection; (3) there is no budget to cover the subsidy or administrative expense for this protection; (4) the indemnity would be paid even if the substitute crop provided more economic value than the intended crop that was prevented from planting; (5) the moral risk is high; (6) there has been little demand for this kind of protection from producers, insurance companies or agents and if, or when, the demand occurs a "pilot program" should be developed and

implemented; (7) if a plan like this is offered it should be offered as a separate policy without government subsidy and delivered by the private insurance industry without any cost to the government; (8) the premium for the 25 percent protection (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) has been increased as much as 30 percent in some counties. This protection should be offered as an option or a separate endorsement that does not affect the cost of the basic protection or require the producer to sign an exclusion; (9) the rating varies within a state from 5 percent to 30 percent for no apparent reason; (10) it puts extreme pressure on the final planting date. For example, producers contemplating switching from corn to soybeans would normally plant whenever they thought they were better off with a normal soybean yield versus a reduced corn yield, but now some producers will want to wait until the final planting date for corn so they can have the prevented planting guarantee when planting a substitute crop; (11) intended acres are very hard to administer; (12) every crop could potentially show one crop as prevented planting with a substitute crop planted (i.e. a producer could report prevented planting corn with planted soybeans on field A and prevented planting soybeans with planted corn on field B when the producers intentions were to plant half of the fields to soybeans and half to corn); (13) it encourages producers to manipulate the program to the detriment of the American taxpayer; (14) acreage on which the producer is able to plant a crop for harvest is not acreage that is prevented from being planted; (15) the definition of "indemnity" in the Basic Insurance Principles states, "For insurance purposes, it means that the producer is restored to approximately the same position from an economic standpoint that was occupied before the loss occurred. \* \* \* Never, under any circumstances, would a gain be permitted." Under this provision, a gain is almost a given; (16) a producer would not plant two crops on the same acreage in the same crop year, except for a producer who normally double crops. That is unfair to producers in areas without excessive moisture who plant only one crop and may receive an indemnity on only that crop, not an additional 25 percent on an imaginary crop; (17) any time a producer can opt out of automatic coverage, adverse selection is assured; (18) the more endorsements, options, and exclusions that are added to a policy, the greater

the likelihood of producers being unaware of all of their policy provisions and obligations which increases the appeals, litigation cases, agent error and omissions occurrences, and Congressional referrals; (19) the rate increases and factors that were used are inaccurate; (20) factors used to decrease premium if a producer opts out of this coverage are excessive; (21) the prevented planting provisions must increase the incentive to plant the original crop and decrease any incentive to simply not plant and collect insurance benefits; (22) adverse selection will also occur as producers will be able to opt out of prevented planting for a reduced charge; and (23) the most recent GAO report addresses the inadequacy of the current premium rates and that the programs rate structure was undermined when the Department provided more benefits in 1995 under the prevented planting provision and, if history is any indication, then premium rates will remain inadequate.

*Response:* FCIC understands the concerns of the crop insurance industry, government employees, and others. Although the Reform Act did not mandate this protection, FCIC's decision to develop the proposed regulations for prevented planting was based on broad policy concerns that had to be considered along with actuarial concerns.

When the present prevented planting provisions were developed for the 1994 crop year, FCIC knew that changes would be needed in future years as experience was gained. Many producers were prevented from planting in the 1995 crop year and voiced discontent with those provisions. It was concluded that there was an inconsistency in coverage that resulted in three different levels of claims payments for producers similarly affected by excessive moisture. Specifically, producers who planted an insured crop that failed were eligible for crop insurance indemnities for a loss in production; producers who were prevented from planting an insured crop and did not plant a subsequent crop were eligible for a crop insurance prevented planting payments, but producers who were prevented from planting an insured crop and planted a substitute crop were not eligible for any crop insurance payments. FCIC believes that this third group should be eligible for crop insurance payments to make them whole.

To maintain actuarial integrity 1996 crop insurance premium rates were recalculated to reflect the prevented planting coverage changes. FCIC believes the coverage changes merely

give producers another insurance choice when they are prevented from planting their initially intended crops. FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC is amending this regulation so that when Producers are prevented from planting their initially intended crop and plant a substitute crop within ten days after the final planting date for the initially intended crop, a prevented planting production guarantee will not be provided for such acreage. In addition, FCIC believes producers will make every effort to plant the crop of the greatest economic value as soon as possible. It would make little sense to delay planting to receive the 25 percent prevented planting payment and run the risk of not getting any crop planted. FCIC believes this amendment will help maintain the actuarial soundness of the prevented planting coverage.

The proposed regulations do not provide the option to delete the primary prevented planting coverage. They do provide producers the option of declining eligibility for a prevented planting production guarantee when a substitute crop is planted. Producers may wish to delete this coverage in return for a reduction in the premium they are required to pay. Based on the forgoing reasons, no change will be made.

*Comment:* One comment received from the crop insurance industry suggested that the option to receive prevented planting benefits and plant a substitute crop should be continuous until cancelled and should only be completed for producers who want the additional coverage, not for producers declining the coverage.

*Response:* FCIC has determined that all producers should have complete prevented planting coverage unless they elect to exclude such coverage when a substitute crop is planted for harvest. Experience in 1993 indicates that most producers were unaware of the availability of prevented planting coverage when it was a separately purchased coverage. Therefore, no change will be made.

*Comment:* One comment received from counsel of a reinsured company stated that the policy provisions should be amended to read, "Proof that you had the inputs available to plant and produce a crop other than a crop you planted the past year or a crop that is part of a regular rotation of the acres planted and for which you had insurance with the expectation of at least producing \* \* \*."



*Response:* FCIC does not agree. The intent of prevented planting coverage is to provide coverage for the intended crop for the current crop year. FCIC does not intend to interfere with producers' responses to market signals. Therefore, no change will be made.

*Comment:* Two comments received from the crop insurance industry expressed concern regarding how insurers will police provisions dealing with a substitute crop and recommended clarifying the following issues in the final rule. The comments state that it is difficult if not impossible to determine the crop and acreage originally intended to be planted and that the provisions will provide an opportunity for producers to claim prevented planting on acreage originally intended to be planted to a substitute crop. One of the comments further questioned whether a minor oilseed crop planted by a grower participating in the so called 0/92 program would be considered a substitute crop or not.

*Response:* The acreage reporting provisions rely on the producer to indicate the specific acreage and crop that were prevented from being planted. On the surface these provisions would indicate a significant vulnerability, especially with regard to the substitute crop provisions. However, other provisions, including those that limit maximum eligible acreage and those that reduce eligible acreage by the amount of any timely and late planted acreage substantially reduce this vulnerability. For example, if a producer indicates acreage is prevented from being planted to corn and plants grain sorghum as a substitute crop, any other acreage planted to corn on the farm would reduce the amount of corn acreage eligible for a prevented planting production guarantee. Likewise, the acreage planted to grain sorghum would reduce the amount of any grain sorghum acreage that may have originally been eligible to receive a prevented planting production guarantee. Other provisions that give the insurer the right to require a producer to provide proof that the inputs were available to plant and produce the crop will also reduce vulnerabilities that might otherwise be associated with this coverage. A minor oilseed crop may be considered a substitute crop if it is planted after the originally intended crop was prevented from being planted. Growers qualifying for prevented planting coverage in this situation may qualify for the so called 0/92 program if the minor oilseed can be planted as a substitute crop under that program. Participation in the so called 0/92 program is not required to be

eligible for crop insurance prevented planting benefits.

*Comment:* One comment received from the crop insurance industry expresses concern that the wording that advises the producer of the choice to exclude prevented planting coverage is not prominent enough in the policy. The comment also suggests, concurrent with the final rule, that guidelines meeting Standard Reinsurance Agreement requirements be issued addressing the form "approved by us" that is required to opt out of prevented planting coverage when a substitute crop is planted.

*Response:* Provisions indicating a producer's choice to exclude this coverage are contained in appropriate locations within the policy. On or before the sales closing date for the intended crop, a producer may "opt out" of prevented planting coverage when a substitute crop is planted by entering the appropriate option code on the crop insurance application or contract change form.

*Comment:* One comment received from the crop insurance industry and one comment received from FSA stated that the provision that requires a producer to provide proof that they had the inputs available to plant and produce a crop adds complication to the loss adjustment process and likely adds little to the ability to determine the producer's intent. If the provision is not eliminated, one of the comments recommends issuance, concurrent with the final rule, of procedure addressing what constitutes proof that the inputs were available.

*Response:* Proof that the producer had the available inputs is not mandatory in all cases. Such proof should be required when producers are claiming they are prevented from planting a crop which they have never historically planted or there are other suspicious circumstances. Procedure is being drafted in the loss adjustment handbooks to include what constitutes such proof. Therefore, no change is necessary.

*Comment:* One comment received from FSA indicated that they did not understand why producers would request deleting the prevented planting provisions from a policy.

*Response:* The producers would not have the option of deleting the prevented planting provisions from the policy, instead they would be allowed only to exclude eligibility for that portion of the prevented planting coverage available when a substitute crop is planted in return for a reduction in the premium rate attributed to such coverage.

*Comment:* One comment received from FSA stated that it seems pointless to add a requirement for producers to provide proof that they had inputs available to plant and produce the intended crop because seed and chemical receipts are too easily obtained by persons willing to manipulate FCIC's procedures.

*Response:* FCIC disagrees with the comment. Falsifying such records could subject the producer, seed or chemical distributor to criminal or civil sanctions. Further, inputs such as seed and chemical receipts verify the intentions to plant and produce the insured crop. The producer who provides false documentation is, of course, open to substantial criminal and civil liability. Failure to produce this evidence when requested is cause for FCIC to deny prevented planting coverage. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended deletion of the extended insurance period provisions for carry-over insureds. The comment indicated that the current sales closing date of March 15 in an area with normal planting times during April and May makes the likelihood of a prevented planting cause prior to March 15 very remote. If the provision is not deleted, it was recommended that the provision be clarified to address whether or not buying up from the CAT level for 1996 falls under the first year or the subsequent year provisions.

*Response:* The Reform Act requires prevented planting coverage be provided for the period between the sales closing date of the previous crop year and the sales closing date of the current crop year. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended that acreage of hybrid seed crops (and any other crop grown under a contract) eligible for prevented planting coverage be limited to the same number of acres under contract for the crop year.

*Response:* FCIC agrees with the comment and has revised the hybrid corn and hybrid sorghum seed crop provisions accordingly.

*Comment:* One comment received from the crop insurance industry recommended clarification of provisions that limit the eligible acreage to the number of acres planted to the insured crop during the previous crop year. Specifically, the comment asked if this provision means the number of acres the producer planted the previous year or the number of acres planted on the land in question; and what happens if the



land changes hands from one year to the next or the producer farms different land from one year to the next.

*Response:* FCIC agrees that the provision may be interpreted incorrectly. The intent is to limit eligible acreage within a FSA farm serial number to the total number of acres planted to the insured crop on the FSA farm serial number the previous crop year unless we agree to a greater number. The crop provisions have been clarified accordingly.

*Comment:* One comment received from the crop insurance industry and two comments received from FSA question how the insurance provider was to agree in writing to insure eligible acreage. They also recommended that procedure be issued, concurrently with the final rule, to indicate the parameters and required elements of an "agreement in writing" to increase the number of acres that would be eligible for prevented planting coverage.

*Response:* Presently, it is up to the insurance provider to develop a process by which they agree in writing when the producer requests to increase their eligible prevented planting acreage. FCIC agrees that further instructions are needed and will incorporate such instructions into the 1996 Catastrophic Risk Protection Handbook and the Crop Insurance Handbook.

*Comment:* One comment received from the crop insurance industry recommended adding language to provisions regarding determination of eligible acreage that limits the eligible acreage to that indicated on a "report of intended acreage." The comment further suggests that language be added to indicate that such report meets the criteria for the agreement in writing that is necessary to exceed the printed policy limitations for eligible acreage.

*Response:* FCIC does not require nor prohibit the use of a "report of intended acreage." However, coverage and premium are based on the actual acreage report filed by the producer, not the report of intended acreage. Therefore, no change is made. FCIC will consider the use of the "report of intended acreage" as an "agreement in writing" to exceed the printed policy limitations for eligible acreage.

*Comment:* One comment received from the crop insurance industry stated that reference to the final planting date in the paragraph which states, "prevented planting coverage will not be provided for any acreage \* \* \* that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit" must be clarified. They did not understand if it applied to the final planting date for the planted crop or the

final planting date for the other crop which the producer wants to declare as prevented planting.

*Response:* In FCIC's opinion, this provision does not require clarification. This provision requires information regarding inputs only for the originally intended crop. Therefore, no change is made.

*Comment:* One comment received from the crop insurance industry recommended deletion of the provision that states "Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report." The comment suggests replacing this provision with the following: "Any acreage you report that does not qualify for prevented planting will be deleted from your acreage report."

*Response:* FCIC disagrees with the comment. The recommended replacement language that states "does not qualify for prevented planting" is not specific enough regarding the eligible acres for prevented planting. Producers need to understand that acreage deleted from the acreage report consists of both the acreage in excess of the number of acres eligible for prevented planting coverage and acres in excess of the number of eligible acres physically located in a unit.

*Comment:* One comment received from FSA suggested that if the "Freedom to Farm" concept is adopted and the producer is not restricted to a required number of acres of a crop, it will be difficult to believe the acreage reported as "intended to be planted."

*Response:* At this time legislative changes in the farm bill are uncertain and it would be premature for FCIC to make changes based on assumptions. FCIC will make the necessary changes based on the law ultimately enacted. The restriction with regard to prior year's planted acreage continues regardless of changes in acreage bases.

*Comment:* One comment received from FSA stated that the following phrase "acreage that is less than 20 acres or 20 percent of the acreage in the unit will be considered intended to be planted to the insured crop planted on the adjoining acreage, unless you can show that you had the inputs available to plant and produce another insured crop on the acreage before the final planting date," will allow prevented planting coverage on less than 20 acres or 20 percent of the acreage in the unit if a producer could prove he was going to plant that to another crop. This scenario is unlikely and we are just allowing a loophole for producers to get

prevented planting coverage on their potholes.

*Response:* The proposed provisions state that, "Prevented planting coverage will not be provided for any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less \* \* \*" was intended to be used only to verify the crop intended to be planted on the acreage. For example, assume that a producer has one section of land comprised of three separate adjacent fields. The first field consists of the east  $\frac{1}{3}$  of the section (100 insurable acres), the second field consists of the central  $\frac{1}{3}$  of the section (100 acres of which 85 acres are not insurable), and the third field consists of the west  $\frac{1}{3}$  of the section (100 insurable acres). If the producer planted corn on the first and the third fields and is prevented from planting the 15 insurable acres in the second (middle/adjacent) field, the 15 acres will be considered to have been intended to be planted to corn, unless the producer can show that inputs were available to plant and produce another crop on those 15 acres. If inputs are not available for another crop, the 15 acres would not be eligible for prevented planting because at least 20 acres in the unit were not prevented from planting.

*Comment:* One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(D) of the Coarse Grains Provisions) to read: On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four crop years;

*Response:* FCIC agrees with the comment and has revised the provisions accordingly.

*Comment:* One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(E) of the Coarse Grains Provisions) to read: On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on such acreage in the same crop year (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

*Response:* FCIC agrees with the comment and has revised the provisions accordingly.

*Comment:* One comment received from the crop insurance industry stated that it is currently impossible to monitor the requirement that all acreage prevented from being planted be reported, especially when it is small acreage and production from planted acreage will likely exceed the combined guarantee. If this reporting requirement is retained, guidelines must be established to be able to enforce and possibly penalize, if not reported completely. Now may be the time to initiate reporting of intended acreage to be planted the following year at the same time that production is reported for the current crop year.

*Response:* FCIC agrees that this potential exists and will continue to monitor this problem and to work on a solution. However, no change will be made at this time.

*Comment:* One comment received from FSA suggested deleting the following sentence because it is repetitious, "If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received."

*Response:* FCIC disagrees that the provision is repetitious. For CAT policies only, this provision specifically disallows more than one prevented planting benefit per acre for a crop year regardless of a past history of double cropping. It also prohibits a prevented planting production guarantee on acreage if another crop is planted for the insured crop year. Both of these benefits may be provided in certain situations under limited and additional coverage. Therefore, no change is made.

*Comment:* One comment received from an attorney on behalf of the crop insurance industry indicated that allowing both a so called 0/92 or 50/92 payment and a crop insurance prevented planting benefit is contrary to law. The comment states that the interim rule allowing both payments (published at 60 FR 35832 (July 12, 1995)) was a move back to ad hoc disaster payments.

*Response:* The so called 0/92 and 50/92 payments are not payments for prevented planting. Producers do not have to have been prevented from planting to collect 0/92 or 50/92

payments. Payments under these programs are intended to compensate producers for price deficiencies (i.e. the difference between the target price and the market price. Since payments under the 0/92 and 50/92 programs are available for producers with crop failure, it would be inconsistent to deny the same benefit to producers who are prevented from planting.

*Comment:* One comment received from the crop insurance industry suggested that additional definitions and clarifications need to be made that spell out the qualifications for double-cropped acreage such as what proof is needed and how many years of records are needed. Otherwise, they recommend excluding double cropped acreage.

*Response:* The prevented planting provisions specify that the producer must provide adequate records of acreage and production that show the acreage has been double-cropped for each of the last four years. Therefore, no change is necessary.

*Comment:* Two comments received from the crop insurance industry regarding allowing prevented planting payments on double-crop situations stated that: (1) It will generate additional prevented planting claims on acreage that would otherwise not be double-cropped. If these provisions are retained, "adequate records of acreage and production in each of the last four years" must be clearly defined to assure that the specific acreage has a definite history of double-cropping; and (2) two prevented planting payments in double cropping situations may add unwanted incentives to encourage the farming of fragile and marginal lands in more arid regions.

*Response:* FCIC does not believe that additional claims will be made for acreage that would not normally be double-cropped. The crop provisions clearly indicate that records of both acreage and production for the previous four crop years must be provided to qualify for benefits for more than one crop in a crop year. This provision should discourage claims on acreage that has not been double-cropped in the past. FCIC does not believe this benefit will encourage tillage of fragile and marginal lands in more arid regions. Growers will not double-crop this land for four consecutive years to qualify for prevented planting benefits in the fifth year.

So that these policy changes can take effect beginning with 1996 spring-planted crops, good cause is shown to make this rule effective immediately upon filing with the Federal Register and without the 30-day period required by the Administrative Procedure's Act

to avoid the pressures on FCIC to make changes after the contract change date as a result of a large number of producers being prevented from planting such as occurred during the 1995 crop year which resulted in confusion among producers, insurance companies, and FSA with respect to the program changes and increased losses.

Prevented planting changes to these policies were made by interim rule for the 1995 crop year. Experience with those modifications require certain changes which have been made by this rule. However, the present policy effective for crop year 1995 fall-planted crops and scheduled to be effective for 1996 spring-planted crops do not adequately protect the producer who suffers a prevented planting loss. The contract change date for 1996 spring-planted crops is November 30, 1995, and this rule must be effective for those crops. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

#### List of Subjects

##### 7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Reporting and recordkeeping requirements, Rice.

##### 7 CFR Part 443

Crop insurance, Hybrid seed, Reporting and recordkeeping requirements.

##### 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements, Small grains, Cotton, ELS cotton, Sunflower seed and coarse grains.

#### Final Rule

In this document, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates on or after November 30, 1995.

Accordingly, 7 CFR parts 401, 443, and 457 are amended as follows:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 401.109 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) of the Hybrid Sorghum Seed Endorsement to read as follows:

**§ 401.109 Hybrid sorghum seed endorsement.**

\* \* \* \* \*

**12. Late Planting and Prevented Planting**

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage

will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty-five percent (25%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any

reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be

reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

\* \* \* \* \*

#### § 401.109 [Amended].

3. Section 401.109 is amended by revising paragraph 13(o) to read as follows:

\* \* \* \* \*

#### 13. Meaning of Terms

\* \* \* \* \*

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

4. Section 401.120 is amended by revising paragraphs 10(a)(3), 10(b), and 10(d) of the Rice Endorsement to read as follows:

#### § 401.120 Rice endorsement.

\* \* \* \* \*

#### 10. Late Planting and Prevented Planting

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii)).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production

guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate

optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

\* \* \* \* \*

5. Section 401.120 is amended by revising paragraph 11(h) to read as follows:

\* \* \* \* \*

#### 11. Meaning of Terms

\* \* \* \* \*

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

#### PART 443—[AMENDED]

6. The authority citation for 7 CFR part 443 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

7. Section 443.7(d) is amended by revising paragraphs 17(a)(3), 17(b), and 17(d) of the Hybrid Seed Crop Insurance Policy to read as follows:

#### § 443.7 The application and policy.

\* \* \* \* \*

(d) \* \* \*

#### 17. Late Planting and Prevented Planting

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented

from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii)).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty percent (20%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200

dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final

planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and

planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

\* \* \* \* \*

8. Section 443.7(d) is amended by revising paragraph 18(w) to read as follows:

\* \* \* \* \*

#### 18. Meaning of Terms

\* \* \* \* \*

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

#### PART 457—[AMENDED]

9. The authority citation for 7 CFR part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

10. Section 457.101 is amended by revising paragraph 1(p) of the Small Grains Crop Provisions to read as follows:

#### § 457.101 Small Grains Crop Insurance.

\* \* \* \* \*

##### 1. Definitions

\* \* \* \* \*

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

11. Section 457.101 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

\* \* \* \* \*

##### 12. Late Planting and Prevented Planting

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented

from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the latest final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the latest final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the latest final planting date for the insured crop. If you elected the Catastrophic Risk

Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage,



acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

\* \* \* \* \*

12. Section 457.104 is amended by revising paragraph 1(n) of the Cotton Crop Provisions to read as follows:

**§ 457.104 Cotton crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

13. Section 457.104 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

\* \* \* \* \*

**12. Late Planting and Prevented Planting**

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented

from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii)).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting

production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to cotton on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage

is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

\* \* \* \* \*

14. Section 457.105 is amended by revising paragraph 1(l) of the ELS Cotton Crop Provisions to read as follows:

**§ 457.105 Extra long staple cotton crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

15. Section 457.105 is amended by revising paragraphs 12(a)(2) and 12 (b) through (h) to read as follows:

\* \* \* \* \*

**12. Prevented Planting**

(a) \* \* \*

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day

following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance

period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(i) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton on the FSA Farm Serial Number during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final

planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year;

(v) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(2)(i) of this section, or a substitute crop allowed in paragraph (a)(2)(ii) of this section);

(vi) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(h) Late planting provisions are not available under these crop provisions.

16. Section 457.108 is amended by revising paragraph 1(l) of the Sunflower Seed Crop Provisions to read as follows:

**§ 457.108 Sunflower seed crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

(1) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

17. Section 457.108 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

\* \* \* \* \*

**13. Late Planting and Prevented Planting**

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date .

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12 (c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop

year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is

planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

18. Section 457.113 is amended by revising paragraph 1(n) of the Coarse Grains Crop Provisions to read as follows:

**§ 457.113 Coarse grains crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

\* \* \* \* \*

19. Section 457.113 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

\* \* \* \* \*

### 13. Late Planting and Prevented Planting

(a) \* \* \*

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii)).)

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

\* \* \* \* \*

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to

plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any

reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if

you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

Done in Washington, DC, on November 27, 1995.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance  
Corporation.

[FR Doc. 95-29606 Filed 11-30-95; 4:56 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. 129CE, Special Condition 23-ACE-84]

#### Special Conditions; Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes modified by Elliott Aviation Technical Products Development, Inc., Moline, Illinois. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is December 7, 1995. Comments must be received on or before January 8, 1996.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 129CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 129CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6941.

## SUPPLEMENTARY INFORMATION:

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 129CE." The postcard will be date stamped and returned to the commenter.

### Background

On September 7, 1995, Elliott Aviation Technical Products Development, Inc., P.O. Box 100, Quad City Airport, Moline, IL 61266-0100, made an application to the FAA for a supplemental type certificate (STC) for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

### Type Certification Basis

The type certification basis for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes is given in Type Certification Data Sheet No. A24CE plus the following: § 23.1301 of Amendment 23-20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23-41; and § 23.1322 of Amendment 23-43; exemptions, if any; and the special conditions adopted by this rulemaking action.